

AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1496**

**Introduced by Assembly Member Olberg**

February 26, 1999

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An act to amend Sections 4034, 4130, 4131, 4132, 4133, 4134, 4135, ~~4136~~, 4137, 4312, 4331, 4400, and 19170 of, ~~to add Sections 4034.1 and 4130.5 to, and to repeal Section 4136 of~~ *and to add Section 4034.1 to*, the Business and Professions Code, relating to home medical equipment services providers, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1496, as amended, Olberg. Home medical equipment services providers.

Existing law, the Pharmacy Law, provides for the licensure and regulation of medical device retailers. A knowing violation of the provisions of the Pharmacy Law is a crime punishable as a misdemeanor or an infraction, as specified.

This bill would instead provide for similar licensure and regulation of home medical equipment services providers, as defined.

The bill would provide for exemption from licensure for enumerated entities.

~~The bill would require the board to issue a license to an applicant upon receipt of a copy of a valid accreditation letter from a national accreditation body recognized by the board.~~

Existing law requires certain written policies and procedures to include emergency services.

The bill would additionally require access to emergency services 24 hours per day, 365 days per year to be available for equipment maintenance or replacement if equipment malfunction may threaten the health of a patient.

The bill would exempt from a licensure fee related to home furnishings a home medical equipment services provider that dispenses or provides hospital beds or wheelchairs pursuant to a prescription from a physician for individual use.

~~Existing law prohibits certain nonresident medical device retailers from selling or distributing dangerous devices in this state through any person or media other than a licensed wholesaler, without registration, as specified.~~

~~This bill would delete that provision.~~

By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

By creating a new source of funds deposited into the Pharmacy Board Contingent Fund, a continuously appropriated fund, the bill would make an appropriation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4034 of the Business and  
2 Professions Code is amended to read:  
3 4034. (a) “Home medical equipment services  
4 provider” is an area, place, or premises, other than a  
5 pharmacy, in and from which dangerous devices, if  
6 authorized, home medical equipment, and home medical  
7 equipment services are sold, fitted, or dispensed pursuant  
8 to prescription. “Home medical equipment services  
9 provider” includes, but is not limited to, any area, place,

1 or premises described in a license issued by the board  
2 wherein dangerous devices, if authorized, home medical  
3 equipment and home medical equipment services are  
4 stored, possessed, prepared, manufactured, or  
5 repackaged, and from which the dangerous devices, if  
6 authorized, home medical equipment and home medical  
7 equipment services are furnished, sold, or dispensed at  
8 retail.

9 (b) “Home medical equipment services provider”  
10 shall not include any area in a facility licensed by the State  
11 Department of Health Services where floor supplies,  
12 ward supplies, operating room supplies, or emergency  
13 room supplies of dangerous devices are stored or  
14 possessed solely for treatment of patients registered for  
15 treatment in the facility or for treatment of patients  
16 receiving emergency care in the facility.

17 (c) “Home medical equipment services provider”  
18 shall not include any area of a home health agency  
19 licensed under Chapter 8 (commencing with Section  
20 1725) of, or a hospice licensed under Chapter 8.5  
21 (commencing with Section 1745) of, Division 2 of the  
22 Health and Safety Code, where the supplies specified in  
23 subdivision (c) of Section 4057 are stored or possessed  
24 solely for treatment of patients by a home health agency  
25 or licensed hospice, as long as all dangerous drugs or  
26 devices are furnished to these patients only upon the  
27 prescription or order of a physician, dentist, or podiatrist.

28 SEC. 2. Section 4034.1 is added to the Business and  
29 Professions Code, to read:

30 4034.1. In addition to the definitions in Section 4034,  
31 all of the following definitions shall apply:

32 (a) “Home medical equipment services provider”  
33 means an individual, entity, or corporation engaged in  
34 the business of providing home medical equipment  
35 services, directly or through contractual arrangement, to  
36 an unrelated sick or disabled individual where that  
37 individual resides.

38 (b) “Home medical equipment services” means the  
39 delivery, installation, maintenance, replacement of, or  
40 instruction in the use of, home medical equipment used

1 by a sick or disabled individual to allow the individual to  
2 be maintained in a residence.

3 (c) “Home medical equipment” means  
4 technologically sophisticated medical devices usable in a  
5 home care setting, including, but not limited to, all of the  
6 following:

7 (1) Oxygen and oxygen delivery systems.

8 (2) Ventilators.

9 (3) Continuous Positive Airway Pressure devices  
10 (CPAP).

11 (4) Respiratory disease management services.

12 (5) Hospital beds and commodes.

13 (6) Electronic and computer driven wheelchairs and  
14 seating systems.

15 (7) Apnea monitors.

16 (8) Low air loss continuous pressure management  
17 devices.

18 (9) Transcutaneous Electrical Nerve Stimulator  
19 (TENS) units.

20 (10) Dangerous devices, as defined in Section 4022.

21 (11) Distribution of medical gases to end users for  
22 human consumption.

23 (12) Any other similar equipment as defined in  
24 regulations adopted by the board.

25 (d) The term “home medical equipment” does not  
26 include any of the following:

27 (1) Medical equipment used or dispensed in the  
28 normal course of treating patients by hospitals and  
29 nursing facilities, other than medical equipment  
30 delivered or dispensed by a separate unit or subsidiary  
31 corporation of a hospital or nursing facility or agency that  
32 is in the business of delivering home medical equipment  
33 to an individual’s residence.

34 (2) Upper and lower extremity prosthetics and related  
35 orthotics.

36 (3) Canes, crutches, walkers, and bathtub grab bars.

37 (4) Medical equipment provided through a  
38 physician’s office incident to a physician’s service.



1 (5) Equipment provided by a pharmacist that is used  
2 to administer drugs or medicine that can be dispensed  
3 only by a pharmacist.

4 (6) Enteral and parenteral equipment provided by a  
5 pharmacist.

6 SEC. 3. Section 4130 of the Business and Professions  
7 Code is amended to read:

8 4130. (a) No person shall conduct a home medical  
9 equipment services provider business in the State of  
10 California unless he or she has obtained a license from the  
11 board. A license shall be required for each home medical  
12 equipment services provider owned or operated by a  
13 specific person. A separate license shall be required for  
14 each of the premises of any person operating a home  
15 medical equipment services provider in more than one  
16 location. The license shall be renewed annually and shall  
17 not be transferable.

18 (b) A warehouse owned by a home medical  
19 equipment services provider, the primary purpose of  
20 which is storage, not dispensing of dangerous devices to  
21 patients, shall be licensed at a fee one-half of that for a  
22 home medical equipment services provider. There shall  
23 be no separate or additional license fee for warehouse  
24 premises owned by a home medical equipment services  
25 provider that are physically connected to the retail  
26 premises or that share common access.

27 (c) The board may, at its discretion, issue a temporary  
28 license, when the ownership of a home medical  
29 equipment services provider is transferred from one  
30 person to another, upon any conditions and for the  
31 periods of time as the board determines to be in the public  
32 interest. A temporary license fee shall be established by  
33 the board at an amount not to exceed the annual fee for  
34 renewal of a license to conduct a home medical  
35 equipment services provider.

36 (d) Notwithstanding any other provision of law, a  
37 home medical equipment services provider may furnish  
38 a prescription device to a licensed health care facility for  
39 storage in a secured emergency pharmaceutical supplies  
40 container maintained within the facility in accordance

1 with facility regulations of the State Department of  
2 Health Services set forth in Title 22 of the California Code  
3 of Regulations.

4 (e) The licensure requirements of this section shall not  
5 apply to the following entities or practitioners, unless the  
6 entities or practitioners furnish home medical equipment  
7 services through a separate entity, including, but not  
8 limited to, a corporate entity, division, or other business  
9 entity:

10 (1) Home health agencies that do not have a Part B  
11 Medicare supplier number.

12 (2) Hospitals, excluding providers of home medical  
13 equipment that are owned or related to a hospital.

14 (3) Manufacturers and wholesale distributors, when  
15 not selling directly to the patient.

16 (4) Health care practitioners legally eligible to  
17 prescribe or order home medical equipment, or who use  
18 home medical equipment, or who use home medical  
19 equipment to treat their patients, including, but not  
20 limited to, physicians, nurses, physical therapists,  
21 respiratory therapists, occupational therapists, speech  
22 pathologists, optometrists, chiropractors, and podiatrists.

23 (5) Pharmacists and pharmacies. Pharmacies that sell  
24 or rent home medical equipment shall be governed by  
25 other provisions of this chapter and any rules and  
26 regulations adopted under this chapter.

27 (6) Hospice programs.

28 (7) Nursing homes.

29 (8) Veterinarians.

30 (9) Dentists.

31 (10) Emergency medical services.

32 ~~SEC. 4. Section 4130.5 is added to the Business and~~  
33 ~~Professions Code, to read:~~

34 ~~4130.5. Notwithstanding Section 4130, 4131, or 4132, a~~  
35 ~~licensee applicant may submit documents evidencing~~  
36 ~~current accreditation through a nationally recognized~~  
37 ~~program, as determined by the board, including the Joint~~  
38 ~~Commission on Accreditation of Hospitals. The board~~  
39 ~~shall issue a license upon receipt of a copy of a valid~~

~~accreditation letter from a national accreditation body  
recognized by the board.~~

~~SEC. 5.~~

SEC. 4. Section 4131 of the Business and Professions Code is amended to read:

4131. (a) The following minimum standards shall apply to all home medical equipment services providers licensed by the board:

(1) Each licensee shall store dangerous devices in a secure, lockable area.

(2) Each licensee shall maintain the premises, fixtures, and equipment in a clean and orderly condition.

(3) Each licensee shall maintain the premises in a dry, well-ventilated condition, free from rodents and insects, and with adequate lighting.

(b) The board may, by regulation, impose any other minimum standards pertaining to acquisition, storage, and maintenance of dangerous devices or other goods, or to maintenance, or condition of the licensed premises of any home medical equipment services providers as the board determines are reasonably necessary.

~~SEC. 6.~~

SEC. 5. Section 4132 of the Business and Professions Code is amended to read:

4132. (a) Each home medical equipment services provider shall have written policies and procedures related to home medical equipment services provider handling and, if authorized by the board pursuant to Section 4133, the dispensing of dangerous devices. Those written policies and procedures shall include, but not be limited to:

(1) Training of staff, patients, and caregivers.

(2) Cleaning, storage, and maintenance of home medical equipment.

(3) Emergency services. If equipment malfunction may threaten a patient's health, access to emergency services 24 hours per day, 365 days per year shall be available for equipment maintenance or replacement.

(4) Recordkeeping requirements.

(5) Storage and security requirements.

1 (6) Quality assurance.

2 (b) The home medical equipment services provider  
3 shall make consultation available to the patient or  
4 primary caregiver about proper use of devices and  
5 related supplies furnished by the home medical  
6 equipment services provider. The home medical  
7 equipment services provider shall notify the patient or  
8 primary ~~care—giver~~ caregiver that consultation is  
9 available.

10 (c) Each licensee shall ensure all personnel of the  
11 home medical equipment services provider who engage  
12 in the taking of orders for, the selling of, or the fitting of  
13 dangerous devices, if authorized by the board pursuant to  
14 Section 4133, shall have training and demonstrate initial  
15 and continuing competence in the order-taking, fitting,  
16 and sale of dangerous devices that the home medical  
17 equipment services provider furnishes pursuant to  
18 Section 4133. The pharmacist-in-charge or exemptee shall  
19 be jointly responsible with the owner or owners of the  
20 home medical equipment services provider for  
21 compliance with the requirement.

22 (d) Each licensee shall prepare and maintain records  
23 of training and demonstrated competence for each  
24 individual employed or retained by the licensee. The  
25 records shall be maintained for three years from and after  
26 the last date of employment.

27 (e) Each licensee shall have an ongoing, documented  
28 quality assurance program that includes, but is not  
29 limited to, the following:

30 (1) Monitoring personnel performance.

31 (2) Storage, maintenance, and dispensing of  
32 dangerous devices.

33 (f) The records and documents specified in  
34 subdivisions (a) and (e) shall be maintained for three  
35 years from the date of making. The records and  
36 documents in subdivisions (a), (d), and (e), shall be, at  
37 all times during business hours, open to inspection by  
38 authorized officers of the law.

39 ~~SEC. 7.~~



1     *SEC. 6.* Section 4133 of the Business and Professions  
2 Code is amended to read:

3     4133. Section 4051 shall not prohibit a home medical  
4 equipment services provider from selling or dispensing  
5 dangerous devices if the board finds that sufficient  
6 qualified supervision is employed by the home medical  
7 equipment services provider to adequately safeguard and  
8 protect the public health. Each person applying for an  
9 exemption shall meet the following requirements to  
10 obtain and maintain that exemption:

11     (a) The home medical equipment services provider  
12 shall be in charge of a pharmacist or an exempt person  
13 who has taken and passed an examination administered  
14 by the board and whose certificate of exemption is  
15 currently valid.

16     (b) The pharmacist or exempt person shall be on the  
17 premises at all times dangerous devices are available for  
18 sale or fitting unless dangerous devices are stored  
19 separately from other merchandise and are under the  
20 exclusive control of the pharmacist or exemptee. A  
21 pharmacist or an exemptee need not be present in the  
22 warehouse facility of a home medical equipment services  
23 provider unless the board establishes that requirement by  
24 regulation based upon the need to protect the public.

25     (c) The board may require an exempt person to  
26 complete a designated number of hours of coursework in  
27 board-approved courses of home health education as a  
28 condition in connection with any disciplinary action  
29 taken against the exempt person.

30     (d) Each premises maintained by a home medical  
31 equipment services provider shall have a license issued by  
32 the board and shall have a pharmacist or exempt person  
33 on the premises if dangerous devices are furnished, sold,  
34 or dispensed.

35     (e) A home medical equipment services provider may  
36 establish locked storage (a lock box or locked area) for  
37 emergency or after working hours furnishing of  
38 dangerous devices. Locked storage may be installed or  
39 placed in a service vehicle of the home medical  
40 equipment services provider for emergency or after

1 hours service to patients having prescriptions for  
2 dangerous devices.

3 (f) The board may, by regulation, authorize a  
4 pharmacist or exempt person to direct an employee of the  
5 home medical equipment services provider who operates  
6 the service vehicle equipped with locked storage  
7 described in subdivision (e) to deliver a dangerous device  
8 from the locked storage to patients having prescriptions  
9 for dangerous devices. These regulations shall establish  
10 inventory requirements for the locked storage by a  
11 pharmacist or exempt person to take place shortly after  
12 a dangerous device has been delivered from the locked  
13 storage to a patient.

14 ~~SEC. 8.~~

15 *SEC. 7.* Section 4134 of the Business and Professions  
16 Code is amended to read:

17 4134. (a) No person other than a pharmacist, an  
18 intern pharmacist, an exempt person, as specified in  
19 Section 4133, or an authorized officer of the law or a  
20 person authorized to prescribe, shall be permitted in that  
21 area, place, or premises described in the license issued by  
22 the board wherein dangerous devices as therein defined  
23 are stored, possessed, prepared, manufactured, or  
24 repacked, except that a pharmacist or exemptee shall be  
25 responsible for any individual who enters the home  
26 medical equipment services provider for the purposes of  
27 receiving fitting or consultation from the pharmacist or  
28 exemptee or any person performing clerical, inventory  
29 control, housekeeping, delivery, maintenance, or similar  
30 functions relating to the home medical equipment  
31 services provider. The pharmacist or exemptee shall  
32 remain present in the home medical equipment services  
33 provider any time an individual is present who is seeking  
34 a fitting or consultation. However, an exemptee need not  
35 be present on the premises of a home medical equipment  
36 services provider at all times of operation and need not  
37 be present in a warehouse facility owned by a home  
38 medical equipment services provider unless the board  
39 establishes that requirement by regulation based upon  
40 the need to protect the public. The exemptee need not

1 be present if the dangerous devices are stored in a secure  
2 locked area, under the exclusive control of the exemptee,  
3 and unavailable for dispensing. This subdivision shall  
4 apply only to dangerous devices, as defined in Section  
5 4022.

6 (b) A “warehouse” as used in this section, is a facility  
7 owned by a home medical equipment services provider  
8 that is used for storage only. There shall be no fitting,  
9 display, or sales at the location. A pharmacist or exemptee  
10 shall be designated as “in charge” of a warehouse but  
11 need not be present during operation. The pharmacist or  
12 exemptee may permit others to possess a key to the  
13 warehouse.

14 (c) Notwithstanding the remainder of this section, a  
15 medical device retailer may establish a locked facility,  
16 meeting the requirements of Section 4133, for furnishing  
17 dangerous devices to patients having prescriptions for  
18 dangerous devices in emergencies or after working hours.

19 (d) The board may by regulation establish reasonable  
20 security measures consistent with this section in order to  
21 prevent unauthorized persons from gaining access to the  
22 area, place, or premises, or to the dangerous devices  
23 therein.

24 (e) The board may by regulation establish a list of  
25 those dangerous devices that may be maintained,  
26 dispensed, sold, or furnished only by a pharmacist in a  
27 pharmacy. In establishing or modifying that list, the  
28 board shall consider factors, including, but not limited to:

29 (1) The potential for abuse or spread of illness.

30 (2) The danger to the public if the device is not so  
31 restricted.

32 (3) The potential danger to minors if the device is not  
33 so restricted.

34 (f) The board may, by regulation, establish labeling  
35 requirements for dangerous devices sold, fitted, or  
36 dispensed by a home medical equipment services  
37 provider as it deems necessary for the protection of the  
38 public.

39 ~~SEC. 9.~~

1 SEC. 8. Section 4135 of the Business and Professions  
2 Code is amended to read:

3 4135. Home medical equipment for rental purposes  
4 shall, at all times while under control of the home medical  
5 equipment services provider, be maintained in a clean  
6 and sanitary condition and in good working order,  
7 following, where available, manufacturer specifications.

8 ~~SEC. 10. Section 4136 of the Business and Professions~~  
9 ~~Code is repealed.~~

10 ~~SEC. 11.~~

11 SEC. 9. Section 4136 of the Business and Professions  
12 Code is amended to read:

13 4136. (a) A ~~nonresident—medical—device—retailer~~  
14 *home medical equipment services provider* shall not sell  
15 or distribute dangerous devices in this state through any  
16 person or media other than a wholesaler who is licensed  
17 pursuant to this chapter without registering as a  
18 ~~nonresident—medical—device—retailer~~ *home medical*  
19 *equipment services provider*.

20 (b) Applications for a ~~nonresident—medical—device~~  
21 ~~retailer~~ *home medical equipment services provider*  
22 registration shall be made on a form furnished by the  
23 board. The board may require any information it deems  
24 reasonably necessary to carry out the purposes of this  
25 section.

26 (c) The Legislature, by enacting this section, does not  
27 intend a license issued to any ~~nonresident—medical—device~~  
28 ~~retailer~~ *home medical equipment services provider*  
29 pursuant to this section to change or affect the tax liability  
30 imposed by Chapter 3 (commencing with Section 23501)  
31 of Part 11 of Division 2 of the Revenue and Taxation Code  
32 on any ~~nonresident—medical—device—retailer~~ *home medical*  
33 *equipment services provider*.

34 (d) The Legislature, by enacting this section, does not  
35 intend a registration issued to any ~~nonresident—medical~~  
36 ~~device—retailer~~ *home medical equipment services*  
37 *provider* pursuant to this section to serve as any evidence  
38 that the ~~nonresident—medical—device—retailer~~ *home*  
39 *medical equipment services provider* is doing business  
40 within this state.

1     *SEC. 10.* Section 4137 of the Business and Professions  
2 Code is amended to read:

3     4137. When, in the opinion of the board, a high  
4 standard of patient safety, consistent with good patient  
5 care, can be provided by the licensure of a home medical  
6 equipment services provider that does not meet all of the  
7 requirements for licensure as a home medical equipment  
8 services provider, the board may waive any licensing  
9 requirements.

10   ~~*SEC. 12.*~~

11   *SEC. 11.* Section 4312 of the Business and Professions  
12 Code is amended to read:

13     4312. (a) The board may void the license of a  
14 wholesaler, pharmacy, home medical equipment services  
15 provider, or veterinary food-animal drug retailer if the  
16 licensed premises remains closed, as defined in  
17 subdivision (e), other than by order of the board. For  
18 good cause shown, the board may void a license after a  
19 shorter period of closure. To void a license pursuant to  
20 this subdivision, the board shall make a diligent, good  
21 faith effort to give notice by personal service on the  
22 licensee. If no written objection is received within 10 days  
23 after personal service is made or a diligent, good faith  
24 effort to give notice by personal service on the licensee  
25 has failed, the board may void the license without the  
26 necessity of a hearing. If the licensee files a written  
27 objection, the board shall file an accusation based on the  
28 licensee remaining closed. Proceedings shall be  
29 conducted in accordance with Chapter 5 (commencing  
30 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
31 Government Code, and the board shall have all the  
32 powers granted in that chapter.

33     (b) In the event that the license of a wholesaler,  
34 pharmacy, home medical equipment services provider,  
35 or veterinary food-animal drug retailer is voided  
36 pursuant to subdivision (a) or revoked pursuant to  
37 Article 9 (commencing with Section 4300), or a  
38 wholesaler, pharmacy, home medical equipment services  
39 provider, or veterinary food-animal drug retailer, notifies  
40 the board of its intent to remain closed or to discontinue

1 business, the licensee shall, within 10 days thereafter,  
2 arrange for the transfer of all dangerous drugs and  
3 controlled substances or dangerous devices to another  
4 licensee authorized to possess the dangerous drugs and  
5 controlled substances or dangerous devices. The licensee  
6 transferring the dangerous drugs and controlled  
7 substances or dangerous devices shall immediately  
8 confirm in writing to the board that the transfer has taken  
9 place.

10 (c) If a wholesaler, pharmacy, home medical  
11 equipment services provider, or veterinary food-animal  
12 drug retailer fails to comply with subdivision (b), the  
13 board may seek and obtain an order from the superior  
14 court in the county in which the wholesaler, pharmacy,  
15 home medical equipment services provider, or  
16 veterinary food-animal drug retailer is located,  
17 authorizing the board to enter the wholesaler, pharmacy,  
18 home medical equipment services provider, or  
19 veterinary food-animal drug retailer and inventory and  
20 store, transfer, sell, or arrange for the sale of, all dangerous  
21 drugs and controlled substances and dangerous devices  
22 found in the wholesaler, pharmacy, ~~medical-device~~  
23 ~~retailer~~ *home medical equipment services provider*, or  
24 veterinary food-animal drug retailer.

25 (d) In the event that the board sells or arranges for the  
26 sale of any dangerous drugs, controlled substances, or  
27 dangerous devices pursuant to subdivision (c), the board  
28 may retain from the proceeds of the sale an amount equal  
29 to the cost to the board of obtaining and enforcing an  
30 order issued pursuant to subdivision (c), including the  
31 cost of disposing of the dangerous drugs, controlled  
32 substances, or dangerous devices. The remaining  
33 proceeds, if any, shall be returned to the licensee from  
34 whose premises the dangerous drugs or controlled  
35 substances or dangerous devices were removed.

36 (1) The licensee shall be notified of his or her right to  
37 the remaining proceeds by personal service or by  
38 certified mail, postage prepaid.

39 (2) Where a statute or regulation requires the licensee  
40 to file with the board his or her address, and any change

1 of address, the notice required by this subdivision may be  
2 sent by certified mail, postage prepaid, to the latest  
3 address on file with the board and service of notice in this  
4 manner shall be deemed completed on the 10th day after  
5 the mailing.

6 (3) If the licensee is notified as provided in this  
7 subdivision, and the licensee fails to contact the board for  
8 the remaining proceeds within 30 calendar days after  
9 personal service has been made or service by certified  
10 mail, postage prepaid, is deemed completed, the  
11 remaining proceeds shall be deposited by the board into  
12 the Pharmacy Board Contingent Fund. These deposits  
13 shall be deemed to have been received pursuant to  
14 Chapter 7 (commencing with Section 1500) of Title 10 of  
15 Part 3 of the Code of Civil Procedure and shall be subject  
16 to claim or other disposition as provided in that chapter.

17 (e) For the purposes of this section, “closed” means  
18 not engaged in the ordinary activity for which a license  
19 has been issued for at least one day each calendar week  
20 during any 120-day period.

21 (f) Nothing in this section shall be construed as  
22 requiring a pharmacy to be open seven days a week.

23 ~~SEC. 13.~~

24 *SEC. 12.* Section 4331 of the Business and Professions  
25 Code is amended to read:

26 4331. (a) Any person who is neither a pharmacist nor  
27 an exemptee and who takes charge of a home medical  
28 equipment services provider, wholesaler, or veterinary  
29 food-animal drug retailer or who dispenses a prescription  
30 or furnishes dangerous devices except as otherwise  
31 provided in this chapter is guilty of a misdemeanor.

32 (b) Any person who has obtained a license to conduct  
33 a home medical equipment services provider and who  
34 fails to place in charge of that home medical equipment  
35 services provider a pharmacist or exemptee, or any  
36 person who, by himself or herself, or by any other person,  
37 permits the compounding or dispensing of prescriptions,  
38 except by a pharmacist or exemptee, or as otherwise  
39 provided in this chapter, is guilty of a misdemeanor.



1 (c) Any person who has obtained a license to conduct  
2 a veterinary food-animal drug retailer and who fails to  
3 place in charge of that veterinary food-animal drug  
4 retailer a pharmacist or exemptee, or any person who, by  
5 himself or herself, or by any other person, permits the  
6 dispensing of prescriptions, except by a pharmacist or  
7 exemptee, or as otherwise provided in this chapter, is  
8 guilty of a misdemeanor.

9 (d) Any person who has obtained a license to conduct  
10 a wholesaler and who fails to place in charge of that  
11 wholesaler a pharmacist or exemptee, or any person who,  
12 by himself or herself, or by any other person, permits the  
13 dispensing of prescriptions, except by a pharmacist or  
14 exemptee, or as otherwise provided in this chapter, is  
15 guilty of a misdemeanor.

16 ~~SEC. 14.~~

17 *SEC. 13.* Section 4400 of the Business and Professions  
18 Code is amended to read:

19 4400. The amount of fees and penalties prescribed by  
20 this chapter, except as otherwise provided, is that fixed by  
21 the board according to the following schedule:

22 (a) (1) The fee for a nongovernmental pharmacy  
23 license shall be three hundred forty dollars (\$340) and  
24 may be increased to four hundred dollars (\$400).

25 (2) The fee for a home medical equipment services  
26 provider license shall not exceed the fee for a  
27 nongovernmental pharmacy license.

28 (b) The fee for a nongovernmental pharmacy or  
29 medical device retailer annual renewal shall be one  
30 hundred seventy-five dollars (\$175) and may be  
31 increased to two hundred fifty dollars (\$250).

32 (c) The fee for processing remodeling plans and  
33 inspecting a remodeled pharmacy shall be one hundred  
34 thirty dollars (\$130) and may be increased to one  
35 hundred seventy-five dollars (\$175).

36 (d) The fee for the pharmacist examination shall be  
37 one hundred fifty-five dollars (\$155) and may be  
38 increased to one hundred eighty-five dollars (\$185).

39 (e) The fee for regrading an examination shall be  
40 seventy-five dollars (\$75) and may be increased to



1 eighty-five dollars (\$85). If an error in grading is found  
2 and the applicant passes the examination, the regrading  
3 fee shall be refunded.

4 (f) The fee for a pharmacist license and biennial  
5 renewal shall be one hundred fifteen dollars (\$115) and  
6 may be increased to one hundred fifty dollars (\$150).

7 (g) The fee for a wholesaler license and annual  
8 renewal shall be five hundred fifty dollars (\$550) and may  
9 be increased to six hundred dollars (\$600).

10 (h) The fee for a hypodermic license and renewal shall  
11 be ninety dollars (\$90) and may be increased to one  
12 hundred twenty-five dollars (\$125).

13 (i) The fee for examination and investigation for an  
14 exemptee license under Sections 4053 and 4054 shall be  
15 seventy-five dollars (\$75) and may be increased to one  
16 hundred dollars (\$100), except for a veterinary  
17 food-animal drug retailer exemptee, for whom the fee  
18 shall be one hundred dollars (\$100).

19 (j) The fee for an exemptee license and annual  
20 renewal under Sections 4053 and 4054 shall be one  
21 hundred ten dollars (\$110) and may be increased to one  
22 hundred fifty dollars (\$150), except that the fee for the  
23 issuance of a veterinary food-animal drug retailer  
24 exemptee license shall be one hundred fifty dollars  
25 (\$150), for renewal one hundred ten dollars (\$110),  
26 which may be increased to one hundred fifty dollars  
27 (\$150), and for filing a late renewal fifty-five dollars (\$55).

28 (k) The fee for an out-of-state drug distributor's  
29 license and annual renewal issued pursuant to Section  
30 4120 shall be five hundred fifty dollars (\$550) and may be  
31 increased to six hundred dollars (\$600).

32 (l) The fee for registration and annual renewal of  
33 providers of continuing education shall be one hundred  
34 dollars (\$100) and may be increased to one hundred  
35 thirty dollars (\$130).

36 (m) The fee for evaluation of continuing education  
37 courses for accreditation shall be set by the board at an  
38 amount not to exceed forty dollars (\$40) per course hour.

39 (n) The fee for evaluation of applications submitted by  
40 graduates of foreign colleges of pharmacy or colleges of

1 pharmacy not recognized by the board shall be one  
2 hundred sixty-five dollars (\$165) and may be increased to  
3 one hundred seventy-five dollars (\$175).

4 (o) The fee for an intern license or extension shall be  
5 sixty-five dollars (\$65) and may be increased to  
6 seventy-five dollars (\$75). The fee for transfer of intern  
7 hours or verification of licensure to another state shall be  
8 fixed by the board not to exceed twenty dollars (\$20).

9 (p) The board may, by regulation, provide for the  
10 waiver or refund of the additional fee for the issuance of  
11 a certificate where the certificate is issued less than 45  
12 days before the next succeeding regular renewal date.

13 (q) The fee for the reissuance of any license, or  
14 renewal thereof, that has been lost or destroyed or  
15 reissued due to a name change is thirty dollars (\$30).

16 (r) The fee for the reissuance of any license, or  
17 renewal thereof, that must be reissued because of a  
18 change in the information, is sixty dollars (\$60) and may  
19 be increased to one hundred dollars (\$100).

20 (s) It is the intent of the Legislature that, in setting fees  
21 pursuant to this section, the board shall seek to maintain  
22 a reserve in the Pharmacy Board Contingent Fund equal  
23 to approximately one year's operating expenditures.

24 (t) The fee for any applicant for a clinic permit is three  
25 hundred forty dollars (\$340) and may be increased to four  
26 hundred dollars (\$400) for each permit. The annual fee  
27 for renewal of the permit is one hundred seventy-five  
28 dollars (\$175) and may be increased to two hundred fifty  
29 dollars (\$250) for each permit.

30 (u) The board shall charge a fee for the processing and  
31 issuance of a registration to a pharmacy technician and a  
32 separate fee for the biennial renewal of the registration.  
33 The registration fee shall be twenty-five dollars (\$25) and  
34 may be increased to fifty dollars (\$50). The biennial  
35 renewal fee shall be twenty-five dollars (\$25) and may be  
36 increased to fifty dollars (\$50).

37 (v) The fee for a veterinary food-animal drug retailer  
38 license shall be four hundred dollars (\$400). The annual  
39 renewal fee for a veterinary food-animal drug retailer  
40 shall be two hundred fifty dollars (\$250).

(w) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars (\$30).

~~SEC. 15.~~

*SEC. 14.* Section 19170 of the Business and Professions Code is amended to read:

19170. (a) The fee imposed for the issuance and for the biennial renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum fee	Minimum fee
Importer's license .....	\$540	\$120
Furniture and bedding manufacturer's license .....	540	120
Wholesale furniture and bedding dealer's license .....	540	120
Supply dealer's license .....	540	120
Custom upholsterer's license .....	360	80
Sanitizer's license .....	360	80
Retail furniture and bedding dealer's license .....	240	40
Retail furniture dealer's license .....	120	20
Retail bedding dealer's license .....	120	20

(b) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the fee requirements imposed by subdivision (a). However, these individuals shall comply with all other provisions of this chapter.

(c) Retailers who only sell "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2 are exempt from the fee requirements imposed by subdivision (a). Those retailers are also exempt from the other provisions of this chapter.

(d) A person who makes, sells, or advertises upholstered furniture and bedding as defined in Sections

1 19006 and 19007, and who also makes, sells, or advertises  
2 furniture used exclusively for the purpose of physical  
3 fitness and exercise, shall comply with the fee  
4 requirements imposed by subdivision (a).

5 (e) It is the intent of the Legislature that upon the  
6 enactment of the amendments to this section, the two  
7 hundred twenty-four thousand dollars (\$224,000)  
8 unallocated reduction proposed in the 1993–94  
9 Governor’s Budget shall be restored to the Bureau of  
10 Home Furnishings and Thermal Insulation Fund.

11 (f) Any entity licensed as a home medical equipment  
12 services provider pursuant to Section 4130 that dispenses  
13 or provides hospital beds or wheelchairs pursuant to a  
14 prescription from a physician for individual use, shall be  
15 exempt from the fee requirement imposed by subdivision  
16 (a).

17 ~~SEC. 16.~~

18 *SEC. 15.* No reimbursement is required by this act  
19 pursuant to Section 6 of Article XIII B of the California  
20 Constitution because the only costs that may be incurred  
21 by a local agency or school district will be incurred  
22 because this act creates a new crime or infraction,  
23 eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section  
25 17556 of the Government Code, or changes the definition  
26 of a crime within the meaning of Section 6 of Article  
27 XIII B of the California Constitution.